

**INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES
WASHINGTON, D.C.**

IN THE PROCEEDING BETWEEN

**EVN AG
(CLAIMANT)**

- AND -

**THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
(RESPONDENT)**

(ICSID Case No. ARB/09/10)

AWARD

Members of the Tribunal

Professor Piero Bernardini, President
Professor Vaughan Lowe, Arbitrator
Professor Francisco Orrego Vicuña, Arbitrator

Secretary of the Tribunal

Ms. Milanka Kostadinova

Representing the Claimant

Mr. Noah Rubins
Dr. Willibald Plesser
Ms. Elizabeth Snodgrass
Mr. Jeffery P. Commission
Ms. Alexandra van der Meulen
Mr. Leon Kopecky
Freshfields Bruckhaus Deringer LLP

with co-counsel Dr. Christian W. Konrad
Konrad & Justich

Representing the Respondent

Dr. Sebastian Seelmann-Eggebert
Dr. Robert Volterra (until 9 March 2011)
Ms. Angela Angelovska-Wilson
Mr. Hussein Haeri
Mr. Jan Spangenberg
Latham & Watkins LLP

Date of Dispatch to the Parties: 2 September 2011

I. PROCEDURE

1. On 12 May 2009, EVN AG (the “Claimant”), a company organized under the laws of Austria, filed a request for arbitration (the “Request”), dated 8 May 2009, with the International Centre for Settlement of Investment Disputes (“ICSID” or the “Centre”) against The former Republic of Macedonia (the “Respondent”).

2. In its Request, the Claimant relies on the dispute resolution provisions contained in Articles 12 and 13 of the 2002 Austria – The former Federal Republic of Macedonia bilateral investment treaty (“BIT”) providing for ICSID arbitration, and on the ICSID arbitration provision of Article 26 of the Energy Charter Treaty (“ECT”).

3. On 12 May 2009, ICSID’s Acting Secretary-General acknowledged receipt of the Request in accordance with Rule 5 of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the “ICSID Institution Rules”) and transmitted copies of the Request to the Respondent and the Embassy of Macedonia in Washington, D.C.

4. The Request was registered by the Acting Secretary-General of ICSID on 3 June 2009, pursuant to Article 36(3) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”).

5. The Request for Arbitration contained the Claimant’s Application for Provisional Measures filed pursuant to Rule 39(1) of the ICSID Rules of Procedure for Arbitration Proceedings (the “Arbitration Rules”). On June 4, 2009, in accordance with Rule 39(5) of the Arbitration Rules, the Acting Secretary-General fixed time limits for the filing of the Parties’ observations on the Claimant’s Application for Provisional Measures. The Parties filed observations on 18 June 2009 (Claimant) and on 24 July 2009 (Respondent). On 17 August 2009, the Claimant responded to the Respondent’s observations of 24 July 2009. On 9 September 2009, the Claimant withdrew without prejudice its Application for Provisional Measures. On 14 September 2009, the Respondent submitted its response to the Claimant’s observations of 17 August 2009.

6. On 3 August 2009, Claimant informed the Centre that the Parties were unable to agree on the method for constituting the Arbitral Tribunal (the “Tribunal”) and requested that the Tribunal be constituted in accordance with Article 37(2)(b) of the ICSID Convention. On 26 August 2009, the Respondent appointed Professor Vaughan Lowe, a national of the United Kingdom, as arbitrator. Thereafter, on 28 August 2009, the Claimant appointed Professor Francisco Orrego Vicuña, a national of Chile, as arbitrator.

7. On 8 September 2009, the Claimant informed the Centre that the Parties were unable to reach an agreement on the appointment of the President of the Tribunal and requested the Chairman of the ICSID Administrative Council (the “Chairman”) to make the appointment in accordance with Article 38 of the ICSID Convention and Rule 4 of the Arbitration Rules. Accordingly, on 9 October 2009, the Chairman appointed Professor Piero Bernardini, a national of Italy, as President of the Tribunal.

8. The Tribunal was constituted on 9 October 2009. Mr. Marat Umerov, Consultant of the ICSID Secretariat, was appointed Secretary of the Tribunal. He was subsequently succeeded by Ms. Milanka Kostadinova, Senior Counsel of the ICSID Secretariat.

9. On 4 December 2009, the Tribunal held its first session with the Parties at The Hague. The Parties confirmed at the first session that the Tribunal had been properly constituted. An agreement was reached on most procedural issue in this proceeding, including on the procedural calendar for the written pleadings. The Tribunal also heard at the first session the Parties' oral argument concerning the allocation of the costs associated with Claimant's submission and subsequent withdrawal of its Application for Provisional Measures. Having deliberated, the Tribunal confirmed its earlier ruling of 19 October 2009 that the issue of the allocation of costs shall be decided in the final award.

10. On the basis of its consultation with the Parties, the Tribunal fixed at the first session a schedule for written procedure. Subsequently, the Parties agreed on several amendments to the timetable for submission of the written pleadings, which were approved by the Tribunal.

11. After a period of negotiation, on 1 June 2011, the Parties entered into a Settlement Agreement. On the same date, pursuant to Rule 43(2) of the Arbitration Rules, the Parties filed with the Secretary-General and the Tribunal a full and signed copy of their Settlement Agreement.

12. In accordance with Rule 43(2), the Parties jointly requested that the Tribunal embody their settlement in the form of an award.

13. The Tribunal notes that paragraph 5 of the Settlement Agreement provides as follows: "Notwithstanding this joint request, either the Claimant or the Respondent may, at any time following 60 days after the date of the settlement, request the Arbitration Tribunal to discontinue the Arbitration."

14. On 15 July 2011, the Parties were asked to clarify this provision of their Settlement Agreement. By letters of 19 July 2011, the both Parties confirmed that they agreed to the permanent discontinuance of the proceeding by the Tribunal's award incorporating the Settlement Agreement pursuant to Rule 43(2) of the ICSID Arbitration Rules, without any residual rights to discontinuance surviving the award irrespective of its date.

II. AWARD

15. The Tribunal, pursuant to the Parties' request and in accordance with Rule 43(2) of the ICSID Arbitration Rules, unanimously decides that the Settlement Agreement signed by the Parties on 1 June 2011, as set below, shall be recorded verbatim as Award on agreed terms:

SETTLEMENT
Between

EVN AG
(the "Claimant")
and

THE REPUBLIC OF MACEDONIA
(the "Respondent")
in

ICSID Case No. ARB/09/10

On this day 17 June 2011,

WHEREAS

(A) On 17 December 1994 the Republic of Austria signed the Energy Charter Treaty (the "ECT"), which entered into force in the Republic of Austria on 16 April 1998. The Republic of Macedonia acceded to and ratified the ECT on 26 March 1998, which entered into force in the Republic of Macedonia on 25 June 1998.

(B) On 28 March 2001 the Republic of Macedonia and the Republic of Austria signed the Agreement on Promotion and Protection of Investments (the "Investment Treaty"), which entered into force on 14 April 2002.

(C) On 17 March 2006 the Claimant entered into an agreement for the Sale and Purchase of State Owned Shares of AD Elektrostojanstvo na Makedonija ("ESM") with the Ministry of Economy of the Republic of Macedonia (the "SPA").

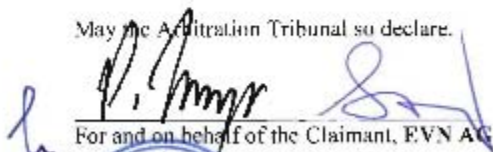
(D) A dispute arose between the Claimant and the Respondent regarding the SPA. This dispute led to the Claimant submitting a request for arbitration (the "Request") to the International Centre for Settlement of Investment Disputes ("ICSID") on 8 May 2009 with reference to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings. ICSID registered the Request on 3 June 2009 as ICSID Case No. ARB/09/10 (the "Arbitration").

(E) The Claimant and the Respondent have agreed to settle the dispute subject matter of the Arbitration and to extinguish any and all claims and rights which the Claimant may have against the Respondent arising out of or in connection with the ECT, the Investment Treaty and the SPA, and other agreements relied upon by the Claimant in the Arbitration proceedings, and that this instrument shall be submitted to the Arbitration Tribunal as the text of their settlement with respect to the dispute subject matter of the Arbitration, to be embodied in an award.

THE CLAIMANT AND THE RESPONDENT HAVE THEREFORE AGREED AS FOLLOWS:

1. Without any admission of liability, the Claimant and the Respondent agree that the Claimant shall and hereby does withdraw all its claims in the Arbitration whether past, present or future, with no order as to costs as more specifically set out below.
2. The Claimant and the Respondent agree that the withdrawal pursuant to paragraph 1 above shall be with prejudice and that, accordingly, this instrument shall be effective in law to settle, fully and finally, the dispute subject matter of the Arbitration.
3. The Claimant and the Respondent agree that this instrument shall be submitted to the Arbitration Tribunal as the full and signed text of their settlement with respect to the dispute subject matter of the Arbitration, to be embodied in an award in accordance with ICSID Arbitration Rule 43 paragraph 2. This instrument shall be without prejudice to the provisions of any other agreement of the same or subsequent date to which the Claimant and the Respondent are or may be parties.
4. The Claimant and the Respondent agree that each party to the Arbitration shall bear its own legal and other expenses; that the Claimant and the Respondent shall bear in equal shares the fees and expenses of the Arbitration Tribunal and the charges for use of the facilities of ICSID; and that any remaining sums advanced to ICSID in accordance with ICSID Regulation 14 shall be returned to the Claimant and to the Respondent in equal shares.
5. The Claimant and the Respondent hereby jointly request the Arbitration Tribunal to embody this settlement in an award in accordance with ICSID Arbitration Rule 43 paragraph 2. Notwithstanding this joint request, either the Claimant or the Respondent may, at any time following 60 days after the date of this settlement, request the Arbitration Tribunal to discontinue the Arbitration.
6. For the avoidance of doubt, the Claimant and the Respondent each waive and renounce any recourse they may have under the Convention with respect to the interpretation, revision or annulment of an award embodying this settlement in accordance with ICSID Arbitration Rule 43 paragraph 2.

May the Arbitration Tribunal so declare.


For and on behalf of the Claimant, EVN AG


Vladimir Peshevski Vice Prime Minister for Economic Affairs
For and on behalf of the Respondent, Republic of Macedonia

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16. The Tribunal notes the agreement of the Parties in paragraphs 1 and 4 of the Settlement Agreement that each Party shall bear its own costs and other expenses, and that the Parties shall bear in equal shares the fees and expenses of the Arbitral Tribunal and ICSID.

[Signed]

Professor Francisco Orrega Vicuña
Arbitrator
Date: [17 August 2011]

[Signed]

Professor Vaughan Lowe
Arbitrator
Date: [8 August 2011]

[Signed]

Professor Piero Bernardini
President
Date: [26 July 2011]